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of Bernard L. Madoff Investment Securities LLC  
and the Chapter 7 Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff,

-against-

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC  
and the Chapter 7 Estate of Bernard L. Madoff,

Plaintiff,

v.

ABU DHABI INVESTMENT AUTHORITY,

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 11-02493 (CGM)

**APPELLEE IRVING H. PICARD,  
TRUSTEE'S COUNTER-  
STATEMENT OF ISSUES ON  
APPEAL AND COUNTER-  
DESIGNATION OF  
ADDITIONAL ITEMS TO BE  
INCLUDED IN THE RECORD  
ON APPEAL**

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Irving H. Picard, the trustee (the “Trustee” and “Appellee”) for the liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act (“SIPA”), 15 U.S.C. § 78aaa *et seq.*, and the substantively consolidated Chapter 7 estate of Bernard L. Madoff, respectfully submits the following counter-statement of the issues (the “Counter-Statement”) and counter-designation of additional items to be included in the record on appeal (the “Counter-Designation”) in connection with the appeal by Abu Dhabi Investment Authority (“ADIA” or the “Appellants”) from the Memorandum Decision Denying Motion to Dismiss the Complaint (the “Memorandum Decision”), entered on October 28, 2022 (ECF No. 126), by the United States Bankruptcy Court for the Southern District of New York in the above-referenced adversary proceeding:

**COUNTER-STATEMENT OF THE ISSUES TO BE PRESENTED ON APPEAL**

The Appellee hereby submits the following counter-statement of the issues on appeal:

1. Whether the Bankruptcy Court was correct in rejecting ADIA’s argument that it is immune from suit under the Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C.A. § 1605, where the court found that the requirements of the third prong of the FSIA’s commercial activity exception were satisfied because ADIA conducted commercial activity outside of the United States that caused a direct effect in the United States. *See Picard v. Abu Dhabi Investment Authority*, Adv. Pro. No. 11-02493 (CGM), 2022 WL 16558049 at \*4 (Bankr. S.D.N.Y. Oct. 28, 2022), ECF No. 126.

**COUNTER-DESIGNATION OF ADDITIONAL ITEMS TO BE INCLUDED  
IN THE RECORD ON APPEAL**

The Appellee hereby counter-designates the following additional items to be included in the record on appeal:

<u>Item No.</u>	<u>Proceeding No.</u>	<u>Docket No.</u>	<u>Description</u>
1	11-02493 (Bankr. S.D.N.Y.)	10	Memorandum of Law in Support of Abu Dhabi Investment Authority's Motion to Withdraw the Reference (related document(s)9) filed by Eric Mark Kay on behalf of Abu Dhabi Investment Authority. (Kay, Eric) (Entered: 04/02/2012)
2	11-02493 (Bankr. S.D.N.Y.)	122	Stipulation And Order To Waive Argument signed on 10/11/2022 (Kinchen, Gwen) (Entered: 10/11/2022)
3	11-02493 (Bankr. S.D.N.Y.)	135	Stipulation and Order Staying Bankruptcy Court Proceedings Pending Appeal signed on 12/1/2022. (related document(s)132) (DuBois, Linda) (Entered: 12/01/2022)

The Trustee reserves the right to supplement or amend the counter-statement of issues to be presented on appeal and to designate additional items for inclusion in the record on appeal.

*[Remainder of page intentionally left blank]*

Dated: December 14, 2022  
New York, New York

**BAKER & HOSTETLER LLP**

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